

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:18-cv-01034

NORTH CAROLINA STATE )  
CONFERENCE OF THE NAACP et al. )

Plaintiffs, )

v. )

ROY ASBERRY COOPER III, in his official )  
capacity as the Governor of North Carolina et )  
al., )

Defendants. )

**GOVERNOR COOPER'S  
RESPONSE TO MOTION TO  
INTERVENE**

The Governor does not take a position on the motion to intervene. However, the Governor responds to the motion to intervene to address statements made and issues raised by the motion.

This case was filed on December 20, 2018. It challenges the validity of N.C. Sess. Law 2018-144, “AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE.” The complaint names as defendants Governor Cooper and nine members of the State Board of Elections who were members at the time the complaint was filed. All defendants were sued in their official capacities.<sup>1</sup> The Governor’s response to the Complaint is due February 28, 2019.

---

<sup>1</sup> The prior State Board of Elections and Ethics Enforcement dissolved on December 28, 2019, and five new members were named to the newly-constituted State Board of Elections effective January 31, 2019.

On January 14, 2019, President Pro Tempore of the North Carolina Senate Phillip Berger and Speaker of the North Carolina House of Representatives Timothy Moore moved to intervene in this case. The proposed intervenors' motion challenges the ability of the current defendants to defend the case, as well as the ability of the Attorney General's office to serve as counsel in the defense of the case.

Governor Cooper disagrees with the legislative defendants' contention that intervention is required based on N.C. Gen. Stat. § 1-72.2.<sup>2</sup> Governor Cooper further disputes the contention raised by the proposed intervenors that the Governor and/or the State Board members<sup>3</sup> represented by the Attorney General's Office are not capable of defending this lawsuit. (*See* Mem. in Supp. of Mot. to Intervene at 11-16) The Governor and the proposed intervenors' alleged policy differences are not material to the question of whether the Governor or other defendants would be able to adequately protect the proposed intervenors' interests. Governor Cooper, the State Board, and the Attorney General's Office are fully capable of performing their duties on behalf of the people of North Carolina. Governor Cooper's veto power and his position on prior legislation that was ultimately declared unconstitutional do not change that fact. Furthermore, cooperation between the parties on procedural matters such as extensions is encouraged by the courts

---

<sup>2</sup> Because the Governor takes no position on this motion other than to note his disagreement with proposed intervenors' representations, the Governor saves for another day the question of the constitutionality of N.C. Gen. Stat. § 1-72.2.

<sup>3</sup> The Governor anticipates moving for dismissal on the grounds that he has not waived immunity and is not a proper party. However, if the Governor is dismissed from the case, the State Board members would be capable of defending the case.

and does not suggest substantive coordination as the proposed intervenors suggest. *See, e.g.,* Fed. R. Civ. P. 1, advisory committee's note to 2015 amendment.

Nonetheless, the Governor takes no position on the motion to intervene and defers to the Court concerning the role of the proposed intervenors in this case.

Respectfully submitted, this 12<sup>th</sup> day of February, 2019.

JOSHUA H. STEIN  
Attorney General

/s/ Stephanie A. Brennan  
Stephanie A. Brennan  
N.C. State Bar No. 35955  
Special Deputy Attorney General  
N.C. Dept. of Justice  
Post Office Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6900  
Facsimile: (919) 716-6763  
Email: sbrennan@ncdoj.gov

/s/ Brian D. Rabinovitz  
Brian D. Rabinovitz  
Special Deputy Attorney General  
N.C. State Bar No. 41538  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629  
Telephone: (919) 716-6863  
Fax: (919) 716-6759  
E-mail: brabinovitz@ncdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing GOVERNOR COOPER'S RESPONSE TO MOTION TO INTERVENE with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

This 12<sup>th</sup> day of February, 2019.

/s/ Stephanie A. Brennan  
Stephanie A. Brennan  
Special Deputy Attorney General